

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

3/8/96  
Surname [REDACTED]

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

DEC 11 1995

Employer Identification Number: [REDACTED]  
Key District Office: Ohio (Cincinnati, OH)

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code (hereafter referred to as the Code) and your request to be classified as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code. We have determined that you do not qualify for exemption under section 501(c)(3) or classification as an organization described in section 170(b)(1)(A)(i) of the Code. The reasons for these conclusions are explained below.

You filed your application for recognition of exemption in [REDACTED] with the key District Director, Cincinnati, Ohio. In your application you indicated that you had been incorporated or formed on [REDACTED]. Initial attempts by the key District Office to obtain a copy of your creating document or to assist you in promulgating a satisfactory creating document were not successful. Instead of providing or creating an appropriate organizing document, you furnished the key District Office a copy of Articles of Incorporation for [REDACTED]. [REDACTED] is a for profit corporation organized in [REDACTED] to carry on a publishing and photography business. Your founder, [REDACTED], is the President and CEO of [REDACTED] and his son [REDACTED] are employed by [REDACTED].

After further requests by the key District Office, you submitted a document entitled [REDACTED] Declaration of Organization to the key District Office in [REDACTED]. A copy of that document is attached to this letter as Attachment #1.

The Declaration of Organization states that you "became organized as a [REDACTED] CHURCH ENTITY" on [REDACTED]. It identifies [REDACTED] as your executive director, [REDACTED] as your Secretary-treasurer, and [REDACTED] as your trustee. [REDACTED]

and [REDACTED] are husband and wife and [REDACTED] is their son. The Declaration of Organization states that all operational decisions in regard to the organization will be made by a two-thirds majority vote and that [REDACTED] is open to anyone of good moral character who does not use dope or drugs. The Declaration of Organization is signed by [REDACTED].

On Schedule A of your application, when asked to provide a brief history of the development of your organization, including the reasons for its formation, you responded as follows:

On or about [REDACTED] [REDACTED] decided having been fed up with all organized Christian churches to form a nondenominational Christian church.

In your application, you identified [REDACTED] as your High Reverend and described your activities as follows:

[REDACTED] functions as a nondenominational outreach ministry for any and all of the creator's children to enjoy every and all sunrises that the creator provides. Religious services are conducted at sunrise every day. The High Reverend conducts a prayer service commencing ten minutes before sunrise. At approximately noon the High Reverend conducts a service to the divine light provided by the creator.

At ten minutes before sunset a prayer of supplication to the divine sunlight is conducted in the hope that the creator will send to us the divine sunlight for the next day.

We practice our faith every day. We avoid all tobacco products, alcoholic beverages, any form of addictive drugs. No people are allowed into our membership with any of the above habits. We try to distance ourselves from people who use inappropriate language.

In the warmer weather we conduct nature walks/hikes through the surrounding wilderness. We go to the local beaches and state parks. We also make trips to the [REDACTED] wilderness which is only 5 minutes across to [REDACTED] via the [REDACTED]. We enjoy being in closeness to the water, boats and animals, and the beautiful scenery of [REDACTED].

Our members have no interest in the hard rock or punk rock music, though we do like as a group soft rock or

[REDACTED]

mellow music. We try to avoid "R" rated movies, watching mainly "G" rated movies and nature films.

In your application you indicated that you have approximately [REDACTED] adult members representing [REDACTED] families. You stated that "membership documents are not available due to confidentiality of separation of church and state." You explained that the number of persons attending your daily religious services varies "due to weather conditions in the [REDACTED]." You stated that "regular formal religious instruction is provided to all members and visitors."

In response to inquiries from the Cincinnati District Office, you furnished a document entitled [REDACTED] Statement of Faith. A copy of that document is attached to this letter as Attachment #2.

The financial information submitted with your application indicates that your financial support has come from [REDACTED]. Your proposed budgets indicate that you expect to receive about \$[REDACTED] annually in gross investment income and that you anticipate expenses for rent, utilities and the like of about \$[REDACTED] a year. In spite of the apparent surplus that such figures would normally produce, you expect to run an operating deficit of about \$[REDACTED] per year. In a letter dated [REDACTED] to [REDACTED] of our office, you explained that [REDACTED] owns the property used as your parsonage. This property also contains "[REDACTED] rental units at present, the proceeds of this go directly to [REDACTED] for the repairs and upkeep of the property."

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations which are organized and operated exclusively for charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations (hereafter referred to as the regulations) states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. The term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice or discrimination; (iii) to defend human and civil

rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(b)(1)(i)(a) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of provision in the organization's articles or by operation of law, be dedicated for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator, shareholders, or persons controlled, directly or indirectly, by such private interests.

Section 509(a)(1) of the Code indicates that for purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) (other than clauses (vii) and (viii)).

Section 170(b)(1)(A)(i) of the Code allows as a deduction any charitable contribution to a church or convention or association of churches.

The Service has looked to the criteria noted in American Guidance Foundation v. U.S., 80-1 USTC 9452 (D.D.C. 1980), for guidance in determining whether an organization is a church under section 170(b)(1)(A)(i) of the Code. The court in this case indicated, among other things, that certain criteria, namely, the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are of central importance in distinguishing a church from other forms of religious organizations.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the court held that an organization did not qualify for exemption under section 501(c)(3) of the Code because it had a substantial nonexempt purpose of serving the private interests of its founder and the founder's wife. The facts in this case were that the organization's founder and his wife executed vows of poverty and transferred all their possessions and income to the organization on the condition that the organization qualifies for exemption under section 501(c)(3) of the Code. The founder controlled all financial decisions of the organization. The court found that a substantial purpose of the organization was to serve the private interests of the founder and his wife. Over 96 percent of the contributions the organization received (mostly from the founder and his wife) were spent on the founder's and his wife's subsistence, their unsubstantiated travel, and upkeep and utilities of their home, which was labeled their "parsonage." Less than one percent of contributions were spent for direct church related expenses. For these and other reasons the court concluded that the organization did not qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 81-94, 1981-1 C.B. 330, holds that a church that was formed by a professional nurse (who is also the church's minister, director, and principal officer) and that is used primarily as a vehicle for handling the nurse's personal financial transactions does not qualify for exemption under section 501(c)(3) of the Code. This conclusion is based on the well established principle that an exempt organization's activities should serve a public rather than a private interest. See also Rev. Rul. 78-232, 1978-1 C.B. 69.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States held that the existence of a single non-exempt purpose, if

substantial in nature, will destroy the exemption under 501(c)(3) regardless of the number or importance of truly exempt purposes.

Section 501(c)(3) of the Code provides exemption from federal income tax for organizations, not individual persons or families. Your creating document, the Declaration of Organization, does not create a legal entity, such as a trust, association, or a corporation. Therefore, you cannot be recognized as exempt under section 501(c)(3) of the Code. Moreover, even if the Declaration of Organization did operate to create a legal entity, that entity could not be exempt under section 501(c)(3) because the Declaration of Organization does not satisfy the requirements of sections 1.501(c)(3)-1(b)(i)(a) and 1.501(c)(3)-1(b)(4) of the regulations. Therefore, even if the Declaration of Organization did create a legal entity, that entity would not satisfy the organizational test of section 501(c)(3) of the Code.

We have also concluded that you are not operated exclusively for exempt purposes because your activities serve the private interests of your founder and his family rather than the public interest. This is demonstrated by the fact that only your founder and his family have anything to do with your organization. They are your officers, their private undertakings are your activities, and you are supported by donations from their business enterprise. Although you have asserted that you have other members, you have provided no substantiation of any kind supporting that assertion. You have also asserted that you provide formal religious instruction to your members, but again there is no evidence in the administrative file to support this assertion. We, therefore, conclude that you are similar to the organization described in Rev. Rul. 81-94, cited and summarized above, which merely funneled the founder's income through a purported exempt organization controlled by the founder and back to the founder in the form of payments for living expenses. In your case, you funnel income from the operations of [REDACTED], your founder's business, back to the founder in the form of a parsonage and payments for his automobile and other personal living expenses. The fact that your founder may appreciate the beauties of nature, enjoy the outdoors, or be of good moral character does not serve to turn expenditures for his personal living expenses into an activity serving a public interest that could support your exemption under section 501(c)(3) of the Code.

Accordingly, since you are neither organized nor operated as required by section 501(c)(3) of the Code, we conclude that you are not exempt from federal income tax under that section of the Code. Contributions to your organization are not deductible



under section 170 of the Code. You are required to file federal income tax returns.

We have further concluded that if you were exempt under section 501(c)(3), you would not be entitled to classification as an organization described in section 170(b)(1)(A)(i) of the Code, the only ground upon which you seek to be classified as other than a private foundation. In order to be classified as an organization described in section 170(b)(1)(A)(i), you must not only be exempt under section 501(c)(3), you must also possess characteristics, such as a congregation, associational activities for members, and/or other meaningful indicia of serving the religious needs of persons who share common religious beliefs. There is no credible evidence in the administrative file to support such a conclusion in your case. We, therefore, conclude that even if you were described in section 501(c)(3), you would not be an organization described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file proper power of attorney and otherwise qualify under the Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

[REDACTED]

You will expedite our receipt of your reply by using the following address on the envelope:

Internal Revenue Service  
Attn: [REDACTED]  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Sincerely,  
(signed) [REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Technical Branch 1

Attachments:

1. Declaration of Organization
2. Statement of Faith

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]					
Date	11-28-95	12/1/95					